REMARKS

Claims 3-6, and 9-11 are pending in this application. By this Amendment, claims 4, 5, 10, and 11 have been canceled without prejudice or disclaimer. Claims 3 and 9 have been amended to address informalities, as suggested by the Examiner. Entry and consideration of these amendments earnestly is requested inasmuch as they do not introduce new matter.

Claim Objections

Claims 3, 4, 9 and 10 have been objected to on the basis that the variable "D" has been described as a ligand. With respect to claims 4 and 10, these claims have been canceled, thereby rendering the Objections moot. With respect to claims 3 and 9, appropriate correction has been made. Reconsideration and withdrawal of the Objection respectfully is requested.

Claim Rejections

Rejections Under 35 U.S.C. § 103

A. Response to rejection of claims 3-6, and 9-11 under 35 U.S.C. 103(a) as being unpatentable over Resconi et al. (U.S. 6,191,294)

In response to the rejection of claims 3-6, and 9-11 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,191,294 of Resconi et al. ("Resconi-1"), Applicants respectfully submit that a *prima facie* case of Obviousness has not been made out by the Examiner, and traverse the rejection.

With respect to the rejection under 103(a), the U.S. Supreme Court in *Graham v. John Deere Co.*, 148 U.S.P.Q. 459 (1966) held that non-obviousness was determined under §103 by (1) determining the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims at issue; (3) resolving the level of ordinary skill in the art; and, (4) inquiring as to any objective evidence of non-obviousness. Accordingly, for the Examiner to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. See MPEP §2143.

Finally, all claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. (BNA) 580 (C.C.P.A. 1974).

The current process claims recite that the transition metal dialkyl compound of the formula (III) is produced at above –30°C by combining a compound M^1X_{x+2} with from 2 to 2.5 equivalents of a compound R^1M^3 in the presence of the compound D. However, in discussing Resconi-1, the Examiner acknowledged that "Example 1 of the patent discloses treatment of neutral ligand with four equivalents of MeLi." (page 3, line 11, emphasis added) The Examiner did not specifically address this claim element in the Office Action or explain why it would be obvious to modify Resconi-1 to arrive at the current claims, with respect to this claim element. Therefore, Applicants respectfully submit that a *prima facie* case of Obviousness has not been made out. Reconsideration and withdrawal of the Rejection respectfully is requested.

B. Response to rejection of claims 3-6, and 9-11 under 35 U.S.C. 103(a) as being unpatentable over Resconi et al. (WO 02/83699)

In response to the rejection of claims 3-6, and 9-11 under 35 U.S.C. 103(a) as being unpatentable over International Patent Publication No. WO 02/83699 of Resconi et al. ("Resconi-2"), Applicants respectfully submit that a *prima facie* case of Obviousness has not been made out by the Examiner, and traverse the rejection.

As discussed above, the current process claims recite that the transition metal dialkyl compound of the formula (III) is produced at above –30°C by combining a compound M^1X_{x+2} with from 2 to 2.5 equivalents of a compound R^1M^3 in the presence of the compound D. However, in discussing Resconi-2, the Examiner acknowledged that "Example 3 of the patent discloses treatment of neutral ligand (indenyl) with four equivalents of MeLi." (page 5, lines 4-5, emphasis added) The Examiner did not specifically address this claim element in the Office Action or explain why it would be obvious to modify Resconi-2 to arrive at the current claims, with respect to this claim element. Therefore, Applicants respectfully submit that a *prima facie* case of Obviousness has not been made out. Reconsideration and withdrawal of the Rejection respectfully is requested.

Applicants respectfully request that a timely Notice of Allowance be issued in this case. Should the Examiner have questions or comments regarding this application or this Amendment, Applicant's attorney would welcome the opportunity to discuss the case with the Examiner.

The Commissioner is hereby authorized to charge U.S. PTO Deposit Account 08-2336 in the amount of any fee required for consideration of this Amendment.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with sufficient postage thereon with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on November 6, 2008.

November 6 2008
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